

**WEST VIRGINIA LEGISLATURE**  
**2019 FIRST EXTRAORDINARY SESSION**

**ENGROSSED**

**Committee Substitute**  
**for**  
**House Bill 162**

BY DELEGATES SHOTT, FOSTER, WESTFALL, GRAVES,  
ESPINOSA, SUMMERS, KUMP, PHILLIPS, HARSHBARGER  
AND JENNINGS

[Referred to the House Select Committee on  
Education Reform A]



A BILL to repeal §18-2-5d, §18-2-13b, §18-2-16, §18-2-16a, §18-2-29, and §18-2-35 of the Code of West Virginia, 1931, as amended; to repeal §18-2K-1 and §18-2K-4 of said code, as amended; to repeal §18-3-9b of said code; to repeal §18-4-12 of said code; to repeal §18-5-18c, §18-5-18e, and §18-5-43 of said code; to repeal §18-5D-1, and §18-5D-2 of said code; to repeal §18-7A-36 of said code; to repeal §18-8A-1, §18-8A-2, §18-8A-3 and §18-8A-4 of said code; to repeal §18-9A-8a, §18-9A-17, and §18-9A-20 of said code; to repeal §18-9B-11a of said code; to repeal §18-9E-1 of said code; to repeal §18-9F-1 and §18-9F-8 of said code; to repeal §18-10J-1 of said code; and to repeal §18-20-9 of said code, and to amend and reenact §18-2K-2 and §18-2K-3 of said code; to amend and reenact §18-5D-3, §18-5D-4, and §18-5D-5 of said code; to amend said code by adding thereto a new section, designated §18-5D-6; to amend and reenact §18-9A-4, §18-9A-6a, §18-9A-7, §18-9A-16, §18-9A-18, §18-9A-21, and §18-9A-24; to amend and reenact §18-9B-1, §18-9B-2, §18-9B-3, §18-9B-4, §18-9B-5, §18-9B-6, §18-9B-6a, §18-9B-7, §18-9B-8, §18-9B-9, §18-9B-10, §18-9B-12, §18-9B-13, §18-9B-14, §18-9B-15, §18-9B-17, §18-9B-18, §18-9B-19, §18-9B-20 and §18-9B-21 of said code; to amend and reenact §18-9E-3, §18-9E-4, and §18-9E-5 of said code; to amend and reenact §18-9F-3, §18-9F-4, and §18-9F-9 of said code; to amend and reenact §18-10J-6 of said code; and to amend and reenact §18-17-3 of said code, all relating to removing antiquated, redundant, or expired provisions of the code; updating references; removing outdated report requirements; removing the requirement for the State Board of Education to consult the Department of Health and Human Services when developing guidelines for care plans; removing dates that are no longer relevant; relating to the public school support program, also known as the school aid funding formula; removing or revising obsolete, outdated, antiquated, inoperative, surplus or superseded provisions; creating the Summer Feeding for All program; specifying legislative findings and declarations for the program; requiring county public schools to conduct an annual survey of students to determine non-school eating

27 patterns and availability of nutritious food; requiring the West Virginia Office of Child  
28 Nutrition to assist the counties with the program; requiring county boards to collect and  
29 compile information regarding availability of food resources; permitting county school  
30 board to investigate and implement programs to facilitate the Summer Feeding for All  
31 program; requiring county school boards to provide annual training to train qualified  
32 entities on operation of a feeding site; requiring the county board to provide it's survey and  
33 findings to Office of Child Nutrition; and requiring the Office of Child Nutrition to monitor  
34 program activities and share information between the counties; requiring setting  
35 foundation allowance for support personnel; deleting provisions relating to School  
36 Construction Fund and the School Building Authority; reducing the proportion of assessed  
37 value on certain classifications of property; and removing the requirement of the  
38 Legislature to appropriate the budget amount as calculated by the State Superintendent  
39 of Schools; removing references to the Division of Health and to RESA entities that no  
40 longer exist; updating references to local health departments; updating procedural  
41 language for rule-making procedures; removing redundant short titles for articles of the  
42 code; removing requirements for consultation with the Department of Health and Human  
43 Resources and local boards of health in development of rules and policies; removing  
44 references to the Division of Health and to RESA entities that no longer exist; updating  
45 references to local health departments; updating procedural language for rule-making  
46 procedures; and to repeal provisions relating to the costs providing clothing to indigent  
47 pupils attending West Virginia schools for the deaf and blind.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 2. STATE BOARD OF EDUCATION.**

#### **§18-2-5d. Duty of board to report guidelines for productive and safe schools.**

1 [Repealed.]

**§18-2-13b. Additional authority of state Board of Education concerning revenue bonds for dormitories, homes or refectories.**

1 [Repealed.]

**§18-2-16. Establishment and operation of state camp and conference center; rental thereof; expenditures; gifts and donations; county court may erect and equip buildings.**

1 [Repealed.]

**§18-2-16a. Construction of buildings and recreational facilities at state camp and conference center; charges for use; financing by revenue bonds or notes permissible; trustee for holders of bonds or notes; contents of trust agreement.**

1 [Repealed.]

**§18-2-29. Competitive grant program for selected schools and school districts.**

1 [Repealed.]

**§18-2-35. Dress codes requiring school uniforms for students.**

1 [Repealed.]

## **ARTICLE 2K. THE DIABETES CARE PLAN ACT.**

**§18-2K-1. Title of article.**

1 [Repealed.]

**§18-2K-2. Adoption of guidelines for individual diabetes care plans.**

1 (a) The State Board of Education shall adopt guidelines for the development and  
2 implementation of individual diabetes care plans. ~~on or before January 1, 2007~~ The guidelines for  
3 information and allowable actions in a diabetes care plan shall meet or exceed the American  
4 Diabetes Association's recommendations for the management of children with diabetes in the  
5 school and day care setting. ~~The State Board of Education shall consult with the Bureau for Public~~  
6 ~~Health and the Department of Health and Human Resources in the development of these~~  
7 ~~guidelines~~ The State Board of Education ~~also~~ shall consult with county board of education

employees who have been designated as responsible for coordinating their individual county's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board of Education shall consider recent resolutions by the Office of Civil Rights of the United States Department of Education regarding investigation of complaints alleging discrimination against students with diabetes.

The guidelines adopted by the state board shall include:

(1) Procedures for school nurses to develop an individual diabetes care plan for any student diagnosed with diabetes, which shall involve the parent or guardian, the student's health care provider, the student's classroom teacher, the student if appropriate, and other appropriate school personnel;

(2) Procedures for regular review of an individual care plan.

(3) Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and management and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student; and

(4) Procedures for information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

(b) The State Board of Education shall provide that the guidelines and any subsequent changes are published and disseminated to county boards of education.

**§18-2K-3. Establishment and implementation of diabetes care plans by county boards to support and assist students with diabetes.**

~~Each~~ A county board of education shall establish and adopt a diabetes care plan which shall be implemented in schools in which students diagnosed with diabetes are enrolled. The plan

3 shall be adopted not later than six months after the state Board of Education adopts guidelines  
4 for the plans pursuant to section two of this article. The plan shall meet all of the guidelines for  
5 diabetes care plans adopted by the State Board of Education pursuant to §18-2K-2 of this code.  
6 In particular, the boards shall require the implementation of the procedures set forth in those  
7 guidelines for the development and implementation of individual diabetes care plans. ~~County~~  
8 ~~boards also~~ A county board shall make available necessary information and staff development to  
9 teachers and school personnel in order to appropriately support and assist students with diabetes  
10 in accordance with their individual diabetes care plans.

**§18-2K-4. Progress report to the Legislature.**

1 [Repealed.]

**ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.**

**§18-3-9b. Reduction in amount budgeted for personal services.**

1 [Repealed.]

**ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**

**§18-4-12. Exception to §18-4-4.**

1 [Repealed.]

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines  
and criteria.**

1 [Repealed.]

**§18-5-18e. Study of limits on the number of pupils per teacher in a classroom in elementary  
and middle schools.**

1 [Repealed.]

**§18-5-43. Duty of the county board of education to report the county-wide productive and  
safe school plans to the West Virginia Board of Education.**

1 [Repealed.]

**ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.**

**§18-5D-1. Short title.**

1 [Repealed.]

**§18-5D-2. Legislative findings; intent.**

1 [Repealed.]

**§18-5D-3. School nutrition programs.**

1 (a) ~~Each~~ A county board of education shall establish and operate school nutrition  
2 programs under which, at a minimum, a nutritious breakfast and lunch are made effectively  
3 available to all students enrolled in the schools of the county in accordance with the State Board  
4 of Education standards. The standards shall include guidelines for determining the eligibility of  
5 students for paid, free and reduced meals. The standards shall also establish procedures and  
6 guidelines for the Feed to Achieve initiative to allow for the provision of healthy, nutritious meals  
7 to all elementary school students, without cost to students, where schools find it practical to do  
8 so.

9 (b) The Feed to Achieve initiative will be phased in for all elementary schools as sufficient  
10 funds become available, through donations, contributions and payments made by individuals,  
11 communities, businesses, organizations and parents or guardians on behalf of students. Nothing  
12 in this article prohibits any school from providing free meals to all of its students.

13 (c) Each county board of education shall:

14 (1) Require all schools to adopt a delivery system approved by the state Office of Child  
15 Nutrition, ~~no later than the 2015 school year~~ that ensures all students are given an adequate  
16 opportunity to eat breakfast. These approved systems shall include, but are not limited to, Grab-  
17 And-Go Breakfasts, Breakfast in the Classroom or Breakfast After First Period; and



(2) Collaborate with the state Office of Child Nutrition to develop strategies and methods to increase the percentage of children participating in the school breakfast and lunch nutrition programs.

(d) In addition to other statistics, the county boards of education, in consultation with the state Office of Child Nutrition, shall determine the number of children in each school who are participating in each meal offered by the school; the number of children who are not eating each meal offered by the school; and the total daily attendance.

(e) The state Office of Child Nutrition shall report to ~~the Joint Committee on Government and Finance, the Select Committee on Children and Poverty and the~~ Legislative Oversight Commission on Education Accountability on or before December 31, 2015, and each year thereafter, on the impacts of the Feed to Achieve Act and any recommendations for legislation.

(f) County boards of education may utilize the nonprofit funds or foundations established in section four of this article or other available funds to offset the costs of providing free meals, after school and summer nutrition programs to elementary students.

(g) If at any time federal financial appropriations to this state for school nutrition programs are terminated, county boards of education are hereby authorized, but not required, to continue the programs at their own expense.

(h) Classroom teachers may not be required to participate in the operation of the school breakfast program as part of their regular duties.

**§18-5D-4. Creating public-private partnerships; creating nonprofit foundation or fund; audit.**

(a) The Department of Education and each county board of education shall promptly establish a fund that is restricted solely for the receipt and expenditure of gifts, grants and bequests for the purposes of this article ~~and~~ or may establish in lieu thereof a nonprofit foundation for this purpose. The purpose of the fund or nonprofit foundation is to provide supplemental or matching funds to increase participation in the nutrition programs in the Feed to Achieve initiative

6 set forth in subsection (c) of this section. The Department of Education shall utilize its fund or  
7 nonprofit foundation to assist county boards of education in counties whose fund or foundation  
8 lacks sufficient business, industry and individual contributors to fund the Feed to Achieve nutrition  
9 programs.

10 (b) Financial support for the fund or foundation may come from either public or private  
11 gifts, grants, contributions, bequests and endowments.

12 (c) Expenditures from the state or county funds or by the foundations shall be used for  
13 provision of food to students through any of the programs or initiatives approved by the Office of  
14 Child Nutrition, including the following programs: School Breakfast Program, National School  
15 Lunch Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, the  
16 Child and Adult Care Food Program, the farm-to-school initiative and community gardens.  
17 Expenditures may also be made for initiatives developed with the Department of Health and  
18 Human Resources and public-private partnerships to provide outreach and nutritional meals when  
19 students are not in school.

20 (d) No administrative expenses or personnel expenses for any of the state departments  
21 implementing this act, the State Board of Education, any county board of education, school or  
22 program may be paid from the funds or by the foundations.

23 (e) Individuals or businesses that contribute to the funds or foundations may specify  
24 schools or nutrition programs for which the contribution is to be used.

25 (f) The Department of Education and county boards of education may establish public-  
26 private partnerships to enhance current or advance additional nutrition programs that provide  
27 nutritious food for children to take home for weekend meals.

28 (g) The Department of Education and county boards of education shall form or expand  
29 existing partnerships with the federal and state departments of agriculture, Department of Health  
30 and Human Resources, local master gardeners, county extension agents or other experts in the  
31 field of agriculture or gardening to develop community gardens, farm-to-school programs and

other such programs that teach students how to grow and produce healthy food and provide healthy food to the students.

(h) The Department of Education shall collaborate with the Department of Health and Human Resources to develop effective strategies and programs such as after school nutrition outreach and programs that improve the healthy lifestyle of all students in pre-kindergarten through 12th grade. The Department of Health and Human Resources may propose rules for promulgation in accordance with the provisions of ~~article three, chapter twenty nine a~~ §29A-3-1 et seq. of this code to effectuate any programs so developed.

(i) All moneys contributed to a fund or foundation established pursuant to this section and all expenditures made therefrom shall be audited as part of the annual independent audit of the State Board of Education and the county boards of education.

**§18-5D-5. Shared table initiative.**

~~(a) The Legislature finds and determines that:~~

~~(1) In West Virginia, one in four children suffer from food insecurity; however, every day each school has a large percentage of food that is left uneaten and thrown away, and in many cases this food can be reused;~~

~~(2) A new initiative called "The Shared Table" encourages schools to collect unused food appropriate for redistribution, and make that food available throughout the day to students who may be hungry, to provide a method for discrete distribution of that food to be taken home by kids with food insecurity, and to donate any unused food to local food pantries and other entities that distribute food to those in need;~~

~~(3) This program has begun to catch on nationally and has shown itself to be an effective way to distribute excess school food;~~

~~(4) The Shared Table initiative can be as simple as designating a table or location in the school for food to be taken by students through the school day, and can also provide a system of discretely placing food in containers in student's lockers each day to take home, and other creative~~

~~initiatives to promote consumption of unused food already provided by schools to students and others who have food insecurity at home; and~~

~~(5) The Shared Table initiative does not require school cafeterias to produce extra food and is only intended to promote the more effective consumption of existing food particularly to students who may otherwise go without. Similar initiatives have been implemented in various states and have been very successful in safely distributing food consistent with U.S. Food and Drug Administration and local health agencies requirements.~~

~~Therefore, the purpose of this section is to establish a statewide initiative to facilitate this worthwhile program~~

~~(b)~~ (a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code that provides policy guidance to county boards on the management and distribution of excess school food consistent with state and county health department and United States Food and Drug Administration requirements and guidelines for the distribution of excess foods. The guidance policy at a minimum shall provide a list of food products and methodologies for distribution that include, but are not limited to:

(1) The types of foods that may be distributed;

(2) Methods of distribution to make excess food available at other times during the school day;

(3) Methods of distributing excess food to students to consume after school; and

(4) Methods to otherwise donate excess food to persons or organizations providing food to persons or families suffering from food insecurity.

~~(c)~~ (b) The preparation, safety, and donation of food made available to students during a regular school meal time and donated to a food bank or any other nonprofit charitable organization for distribution, shall comply with and be thereby covered by the Good Samaritan Food Donation Act, §55-7D-1 *et seq.* of this code.

40           ~~(d)~~ (c) The methods of distributing excess food to students within a school may include a  
41 sharing table where food service staff, students and faculty may return appropriate food items  
42 consistent with state board guidelines to make those food items available to students during the  
43 school day.

44           ~~(e)~~ (d) Each county board of education shall establish a program to assist and encourage  
45 schools to participate in the Shared Table initiative.

**§18-5D-6. Summer Feeding for All.**

1           (a) The Legislature finds and declares that:

2           (1) The Feed to Achieve initiative has successfully improved the availability and  
3 awareness for the need of provide nutritious food to state students and the Shared Table Initiative  
4 has facilitated a spirit of innovation and consciousness in our counties to find alternative ways to  
5 feed children in need;

6           (2) A periodic assessment of the needs for county students and availability of county  
7 resources is necessary to determine what type of resources are available and needed to reduce  
8 food insecurity for students when they are not in school;

9           (3) That expansion of the Shared Table Initiative to include a program to encourage  
10 county schools to locate, participate in and initiate programs to provide meals during summers  
11 and non-school day times when some children may not have access to healthy meals could assist  
12 in reducing food insecurity for thousands of children in this state, and therefore, creating a  
13 mechanism that is not a directive from the Legislature upon county school boards, but rather an  
14 authorization to use school resources to find innovative ways, within the means of the county  
15 school systems, to assist the communities they serve, will provide a public benefit.

16           (b) Every county public school system shall conduct an annual countywide survey of  
17 public school students to determine their non-school eating patterns and the availability of  
18 nutritious food to them when schools are closed. The West Virginia Office of Child Nutrition will

assist and facilitate with this survey to determine the needs for supplemental food services in every county.

(c) Each county board shall also collect and compile information regarding availability of food resources in the county during non-school days and distribute this information to all students. These resources may include any public, private, religious group or charity that will provide food to children with food insecurity.

(d) Each county school board may investigate and implement any program that may facilitate this initiative, including but not limited to entrepreneurship programs to foster innovation in providing assistance, utilizing participation in programs as a positive discipline option, and creating mentorship programs or other opportunities to participate in non-school student feeding programs.

(e) Each county school board shall provide, at a minimum, an annual countywide or a coordinated regional training opportunity, with assistance from the West Virginia Office of Child Nutrition, that ensures that any entity that potentially qualifies as a summer or non-school day feeding site according to the county survey, is afforded the opportunity to receive training on operation of a feeding site.

(f) Each county board shall provide its survey, a summary of its activities, and any findings or recommendations the county school board has related thereto, to the West Virginia Office of Child Nutrition at a date determined each year by that office.

(g) The West Virginia Office of Child Nutrition shall monitor these activities and share between counties information about innovative and successful program initiatives around the state to promote and facilitate the Summer Feeding for All program.

## **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-36. Joint study of state retirement systems; report to Joint Committee on Government and Finance by specified date of study conclusions.**

[Repealed.]

**ARTICLE 8A. ATTENDANCE OF HOMELESS CHILDREN.**

**§18-8A-1. Legislative findings; definition of homeless child.**

1 [Repealed.]

**§18-8A-2. Residence of child.**

1 [Repealed.]

**§18-8A-3. Attendance of homeless children.**

1 [Repealed.]

**§18-8A-4. Report on at-risk children.**

1 [Repealed.]

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-4. Foundation allowance for professional educators.**

1 (a) The basic foundation allowance to the county for professional educators is the amount  
2 of money required to pay the state minimum salaries, in accordance with provisions of §18A-4-1  
3 *et seq.* of this code, subject to the following:

4 (1) In making this computation a county shall receive an allowance for state aid eligible  
5 professional educator positions to each 1000 students in net enrollment as follows:

6 (A) For each high-density county, 72.3 professional educators per each 1000 students in  
7 net enrollment;

8 (B) For each medium-density county, 72.45 professional educators per each 1000  
9 students in net enrollment;

10 (C) For each low-density county, 72.6 professional educators per each 1000 students in  
11 net enrollment;

12 (D) For each sparse-density county, 72.75 professional educators per each 1000 students  
13 in net enrollment; and

(E) For any professional educator positions, or fraction thereof, determined for a county pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of professional educators for the county;

(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(b) Each county board shall establish and maintain a minimum ratio of professional instructional personnel per state aid funded professional educators as follows:

(1) For each high-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is 91.29 percent;

(2) For each medium-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is 91.24 percent;

(3) For each low-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is 91.18 percent;

(4) For each sparse-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is 91.07 percent; and

(5) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional instructional personnel for the school



or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(c) Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: *Provided*, That a county may not be penalized if it has increases in enrollment during that school year. ~~*Provided, however, That for the school year 2017-2018, only, a county may not be penalized for not meeting the applicable minimum ratio required in subsection (b) of this section.*~~

(d) A county may not increase the number of administrative personnel employed as either professional educators or pay grade "H" service personnel above the number which were employed, or for which positions were posted, on June 30, 1990, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.

**§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.**

(a) The total teachers retirement fund allowance is the sum of the basic foundation allowance for professional educators, the basic foundation allowance for professional student support personnel and the basic foundation allowance for service personnel, as provided in §18-9A-4, §18-9A-5 and §18-9A-8 of this code; all salary equity appropriations authorized in §18A-4-5 of this code; and such amounts as are to be paid by the counties pursuant to §18A-4-5a and §18A-4-5b of this code to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by the average retirement contribution rate for each county board. The average contribution rate for each county board is based on the required employer contributions for state aide eligible employees participating in the retirement plans pursuant to §18-7A-1 *et seq.* and §18-7B-1 *et seq.* of this code.

(b) The teachers retirement fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the employers accumulation fund of the State Teachers

13 Retirement System Fund pursuant to ~~section eighteen, article seven-a of this chapter~~ §18-7A-18  
14 of this code and shall be in lieu of the contribution required of employers pursuant to ~~subsection~~  
15 ~~(b) of said section~~ §18-7A-18(b) of this code as to all personnel included in the allowance for state  
16 aid in accordance with ~~sections four, five and eight of this article~~ §18-9A-4, §18-9A-5 and  
17 §18-9A-8 of this code.

18 (c) In addition to the teachers retirement fund allowance provided for in subsection (a) of  
19 this section, there shall be an allowance for the reduction of any unfunded liability of the teachers  
20 retirement fund in accordance with the following provisions of this subsection. On or before  
21 December 31, of each year, the actuary or actuarial firm employed in accordance with the  
22 provisions of §5-10D-4 of this code shall submit a report to the President of the Senate and the  
23 Speaker of the House of Delegates which sets forth an actuarial valuation of the teachers  
24 retirement fund as of the preceding June 31. Each annual report shall recommend the actuary's  
25 best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over  
26 a 40-year period beginning on July 1, 1994, and to meet the cash flow requirements of the fund  
27 in fulfilling its future anticipated obligations to its members. In determining the amount of funding  
28 required, the actuary shall take into consideration all funding otherwise available to the fund for  
29 that year from any source. ~~Provided, That the appropriation and allocation to the teachers'~~  
30 ~~retirement fund made pursuant to the provisions of section six-b of this article shall be included in~~  
31 ~~the determination of the requisite funding amount~~ In any year in which the actuary determines  
32 that the teachers retirement fund is not being funded in such a manner, the allowance made for  
33 the unfunded liability for the next fiscal year shall be not less than the amount of the actuary's  
34 best estimate of the amount necessary to conform to the funding requirements set forth in this  
35 subsection.

**§18-9A-7. Foundation allowance for transportation cost.**

1 (a) The allowance in the foundation school program for each county for transportation is  
2 the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, 87.5 percent;

(B) For each medium-density county, 90 percent;

(C) For each low-density county, 92.5 percent;

(D) For each sparse-density county, 95 percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional 10 percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional 10 percent: *Provided, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: Provided, however,* That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to 8.33 percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the

29 replacement of buses except as provided in subdivision (4) of this subsection. Buses purchased  
30 after July 1, 1999 that are driven 180,000 miles, regardless of year model, are subject to the  
31 replacement value of 8.33 percent as determined by the state board. In addition, in any school  
32 year in which its net enrollment increases when compared to the net enrollment the year  
33 immediately preceding, a school district may apply to the state superintendent for funding for an  
34 additional bus or buses. The state superintendent shall make a decision regarding each  
35 application based upon an analysis of the individual school district's net enrollment history and  
36 transportation needs: *Provided*, That the superintendent may not consider any application which  
37 fails to document that the county has applied for federal funding for additional buses. If the state  
38 superintendent finds that a need exists, a request for funding shall be included in the budget  
39 request submitted by the state board for the upcoming fiscal year;

40 (4) Notwithstanding the restriction on the use of funds for the replacement of buses  
41 pursuant to subdivision (3) of this subsection, up to \$200,000 of these funds in any school year  
42 may be used by a county for school facility and equipment repair, maintenance and improvement  
43 or replacement or other current expense priorities if a request by the county superintendent listing  
44 the amount, the intended use of the funds and the serviceability of the bus fleet is approved by  
45 the state superintendent. Before approving the request, the state superintendent shall verify the  
46 serviceability of the county's bus fleet based upon the state school bus inspection defect rate of  
47 the county over the two prior years; and

48 (5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil  
49 receiving the aid within each county.

50 (b) The total state share for this purpose is the sum of the county shares: *Provided*, That  
51 a county may not receive an allowance which is greater than one-third above the computed state  
52 average allowance per transportation mile multiplied by the total transportation mileage in the  
53 county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county is for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

**§18-9A-8a. Foundation allowance for regional education service agencies.**

[Repealed.]

**§18-9A-16. General school fund and its use.**

There ~~shall be established~~ is continued a separate school fund to be known as the “general school fund” which shall be administered by the ~~same board as provided in section five, article nine of this chapter~~ state superintendent. The proceeds from the income of this school fund, and the interest thereon, as provided for under the irreducible school fund amendment to the Constitution shall accrue to the General School Fund which, with moneys appropriated by the Legislature, shall be used to support the public schools of the state. All other state funds and taxes formerly dedicated to the General School Fund shall hereafter be paid into the State General Fund.

~~No person who, at the time of passage of this article, depended on the general school fund in part or in whole for payment of his salary shall have his salary reduced by virtue of this article.~~

**§18-9A-17. Administration of school finance.**

[Repealed.]

**§18-9A-18. Rules and ~~regulations~~ policies.**

1 The state board shall have authority to make such reasonable rules and ~~regulations~~  
2 policies as may be necessary to enable it to carry out the purposes and intent of this article with  
3 respect to the allocation of state aid for schools.

**§18-9A-20. Repeal of inconsistent provisions.**

1 [Repealed.]

**§18-9A-21. Funding for alternative education programs.**

1 (a) An appropriation may be made to the state department to be distributed to county  
2 boards for the operation of alternative education and prevention programs established in  
3 accordance with policies and procedures adopted by the state board under §18-2-6 of this code  
4 ~~The appropriation shall be in~~ an amount equal to \$18 per student in net enrollment, subject to  
5 appropriation by the Legislature. The state board shall distribute 98 percent of the total  
6 appropriation to the county boards proportionate to each county's net enrollment. The remaining  
7 two percent of the appropriation shall be retained by the state department to support the provision  
8 of services to the county boards in administering programs established in accordance with policies  
9 and procedures adopted by the state board under §18-2-6 of this code.

10 (b) Nothing in this section may be construed to require any specific level of funding by the  
11 Legislature.

12 ~~(c) The increase from \$12 per student in net enrollment to \$18 per student in net~~  
13 ~~enrollment pursuant to the amendment and enactment of this section during the 2010 regular~~  
14 ~~session of the Legislature is not subject to the provisions of section three-a~~

**§18-9A-24. Foundation allowance for Public Employees Insurance Fund; employer  
contributions for persons employed outside of foundation allowance.**

1 (a) The allowance to the Public Employees Insurance Agency for school employees shall  
2 be made in accordance with the following: The number of individuals employed by county boards  
3 as professional educators pursuant to §18-9A-4 of this code, plus the number of individuals  
4 employed by county boards as service personnel pursuant to §18-9A-5 of this code, plus the

5 number of individuals employed by county boards as professional student support personnel  
6 pursuant to §18-9A-8 of this code, multiplied by the average premium rate for all county board of  
7 education employees established by the Public Employees Insurance Agency Finance Board.  
8 The average premium rate for all county board of education employees shall be incorporated into  
9 each financial plan developed by the Finance Board in accordance with §5-16-5 of this code. The  
10 premiums shall include any proportionate share of retirees subsidy established by the Finance  
11 Board and the difference, if any, between the previous year's actual premium costs and the  
12 previous year's appropriation, if the actual cost was greater than the appropriation. The amount  
13 of the allowance provided in this subsection shall be paid directly to the West Virginia Public  
14 Employees Insurance Agency. Each county board shall reflect its share of the payment as  
15 revenue on its financial statements to offset its expense for the employer annual required  
16 contribution, as defined in §5-16D-1 *et seq.* of this code.

17 (b) Notwithstanding any other provision of §5-16D-6 of this code to the contrary, any  
18 amount of employer annual required contribution allocated and billed to county boards ~~on or after~~  
19 ~~July 1, 2012, and any amount of the employer annual required contribution allocated and billed to~~  
20 ~~the county boards prior to that date~~ for employees who are employed as professional employees  
21 within the limits authorized by §18-9A-4 of this code, employees who are employed as service  
22 personnel within the limits authorized by §18-9A-5 of this code, and employees who are employed  
23 as professional student support personnel within the limits authorized by §18-9A-8 of this code,  
24 shall be charged to the state: *Provided*, That nothing in this subsection requires any specific level  
25 of funding by the Legislature in any particular year: *Provided, however*, That charging specified  
26 amounts to the state pursuant to this section is not to be construed as creating an employer  
27 employee relationship between the State of West Virginia and any employee under the employ of  
28 a county board or as creating a liability of the state.

29 (c) County boards are liable for the employer annual required contribution allocated and  
30 billed to the county boards ~~on or after July 1, 2012, and any amount of the employer annual~~

31 ~~required contribution allocated and billed to the county boards prior to that date~~ for individuals  
32 who are employed as professional employees above and beyond those authorized by §18-9A-4  
33 of this code, individuals who are employed as service personnel above and beyond those  
34 authorized by §18-9A-5 of this code, and individuals who are employed as professional student  
35 support personnel above and beyond those authorized by §18-9A-8 of this code. For each such  
36 employee, the county board shall forward to the Public Employees Insurance Agency an amount  
37 equal to the average premium rate established by the finance board in accordance with  
38 subsection (a) of this section: *Provided*, That the county board shall pay the actual employer  
39 premium costs for any county board employee paid from special revenues, federal or state grants,  
40 or sources other than state general revenue or county funds.

41 ~~(d) Prior to July 1, 1995, nothing in this article shall be construed to limit the ability of~~  
42 ~~county boards to use funds appropriated to county boards pursuant to this article to pay employer~~  
43 ~~premiums to the Public Employees Insurance Agency for employees whose positions are funded~~  
44 ~~pursuant to this article~~ Funds appropriated to county boards pursuant to this article shall not be  
45 used to pay employer premiums for employees of such boards whose positions are not, or will  
46 not be within 20 months, funded by funds appropriated pursuant to this article.

**ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE COUNTY SCHOOL BOARD**  
**BUDGETS AND AUDITS.**

**§18-9B-1. Purpose and construction of article.**

1 Because of the adoption of the "Tax Limitation Amendment," it has become necessary for  
2 the state to participate, to an increasing degree, in the financing of the free public schools. In the  
3 fiscal year 1938-1939, this participation aggregated 55 percent of the total expended by county  
4 boards of education for the operation of the schools of the state, and in 17 counties state aid  
5 represented in excess of 70 percent of the total amounts spent for public education in those  
6 counties. In consequence of this state investment in local education, the state has acquired a



paramount interest in the sound and stable management of the financial affairs of county school districts so that the maximum effectiveness of education may be obtained from the expenditure of the limited funds available.

With the foregoing purposes in view, this article is enacted to develop improved methods of financial administration and to bring increased financial guidance and assistance to the management of county school affairs.

The provisions of this article shall be construed to be in addition to the authority now exercised by the ~~Tax Commissioner~~ State Auditor as chief inspector and supervisor of public offices (~~under article nine, chapter six of the code~~) under §6-9-1 *et seq.* of the code for the purposes of fidelity accounting and auditing. The intent of the Legislature is that the powers granted by this article to the ~~state board of school finance~~ State Superintendent of Schools over financial management shall in administration be fully coordinated with those of the ~~Tax Commissioner~~ State Auditor over the legality and fidelity of public expenditures.

The provisions of this article shall be liberally construed to give effect to the purposes stated.

**§18-9B-2. Definitions.**

For the purposes of this article:

~~"Board of finance" means the state board of school finance~~ "State superintendent" means the State Superintendent of Schools.

"Budget" means the annual budget of school revenues and expenditures prepared and adopted by a county board of education in accordance with this article.

"Levy estimate" means the summary statement of the total budgeted school requirements prepared and adopted by a county board of education in accordance with law, in justification of the amount levied upon taxable property within the county for the support of the local schools.

"Appropriation" means an item, or the amount of an item, budgeted by a county board of education for expenditure during the fiscal year.

“Expenditure schedule” means a schedule for the expenditure of amounts budgeted throughout the fiscal year and adopted in conjunction with the annual budget.

“County board” means a county board of education.

~~“Employment term” means ten months of employment as defined in section fifteen, article five of this chapter.~~

~~“Instructional term” shall be that as defined in section fifteen, article five of this chapter~~

**§18-9B-3. State board of school finance State Superintendent of Schools.**

~~There is hereby created the “state board of school finance” which shall consist of the state superintendent of free schools, as chairman, the State Tax Commissioner, and the director of the budget as secretary. The members of the board shall serve without additional compensation. The board shall meet upon the call of the chairman or a majority of its members. It shall keep a minute record of all proceedings and a special record of general regulations and special orders. The meeting place of the board shall be at the state capital. The concurrence of a majority of the members shall be necessary for all official acts. The board~~ State Superintendent of Schools ~~shall exercise the powers and perform the duties conferred upon it~~ him or her ~~by this article.~~

~~The personnel of the state departments represented upon the membership of the board shall be available to the board for performance of its powers and duties~~

**§18-9B-4. Powers and duties of board State Superintendent of Schools.**

~~The board of finance~~ State Superintendent Schools, in addition to the specific powers and duties conferred upon it ~~him or her~~, shall advise and assist county boards of education and county superintendents in the planning and management of school finances to the end that the most effective program of public education be realized from the funds available for expenditure by the several counties.

In the exercise of ~~its powers~~ the powers granted under this article, the ~~board of finance~~ state superintendent shall not substitute ~~its~~ his or her discretion and judgment for that of a county board of education with respect to the desirability or reasonability of a lawful school expenditure

9 if the provisions of law and the orders of the ~~board of finance~~ state superintendent are complied  
10 with by the county board. If, however, a county board fails or refuses to provide for the support of  
11 the standard school term, to adhere to the budget and the expenditure schedule, or to comply  
12 with other provisions of this article, the ~~board of finance~~ state superintendent may require such  
13 action on the part of the county board, not in violation of law, as the ~~board of finance~~ state  
14 superintendent may find to be best calculated to restore the financial affairs of the county board  
15 to a proper and lawful basis.

**§18-9B-5. School district budgeting.**

1 The ~~board of finance~~ state superintendent shall formulate and prescribe a uniform system  
2 of school district budgeting for the use of all county school districts to include, at least:

- 3 (1) Itemization schedules for estimating anticipated revenues and receipts of all kinds;
- 4 (2) Itemization schedules for estimating anticipated requirements for expenditure during  
5 the fiscal year;
- 6 (3) The form, classification and itemization of budget items for appropriation purposes;
- 7 (4) Expenditure schedules for the allotment of amounts of proposed expenditures  
8 throughout the fiscal year;
- 9 (5) A budget calendar fixing the dates by or upon which schedules shall be prepared,  
10 budgets adopted, and reports made to the ~~board of finance~~ state superintendent;
- 11 (6) Methods and procedures of budgeting to be followed in the use of the uniform system.

**§18-9B-6. Submission and approval of budget.**

1 A county board of education shall, on or before the day fixed by the budget calendar,  
2 submit its proposed budget to the ~~board of finance~~ state superintendent together with such  
3 supporting schedules as the ~~board~~ state superintendent may require.

4 A county board shall not finally adopt its budget until after the written approval of the ~~board~~  
5 ~~of finance~~ state superintendent has been received, and the levy estimate has been approved by  
6 the ~~Tax Commissioner~~ State Auditor as required by law. If the ~~Tax Commissioner~~ State Auditor

finds that the levy estimate, based upon the budget, does not conform to the requirements of law, the board shall authorize and require such further revision of the budget as may be necessary for the correction of the levy estimate as required by the ~~Tax Commissioner~~ State Auditor.

A county board of education shall submit a preliminary budget upon requirement of the ~~board of finance~~ state superintendent, which approved budget shall be considered by the ~~Tax Commissioner~~ State Auditor when approving levy estimates.

**§18-9B-6a. Delaying submission of budget.**

Notwithstanding any other provisions of the code to the contrary, the county board shall not be required to submit its budget for approval by the state ~~Board of Education~~ superintendent as provided by ~~section twelve a, article eight, chapter eleven of this code and~~ §18-9B-6 and §18-9B-7 of this code, until the 10th day next following the state ~~board's~~ superintendent's transmittal of final state aid computations following the adoption of the state budget, but no later than May 30: *Provided*, That, in any year in which the state budget is not adopted on or before May 1, the state ~~board~~ superintendent may require the county board to adopt a preliminary budget and to submit it to the state ~~board~~ superintendent no later than May 30, and when final computations of state aid are transmitted to the county board, the county board shall make such adjustments as are necessary prior to final adoption of the budget.

**§18-9B-7. Determination by the ~~board of finance~~ state superintendent before final approval of budget; length of term.**

The ~~board of finance~~ state superintendent, before giving its final approval to a proposed budget, shall require that:

- (1) Estimates of revenue and receipts are reasonable and accurate;
- (2) Amounts are budgeted so as to cover actual requirements of school operation; and
- (3) Amounts are budgeted so as to maintain the schools of the county for the employment term and the instructional term as ~~defined in section fifteen, article five of this chapter~~ provided by §18-5-45 of this code.

**§18-9B-8. Projected expenditures order of revision in budget.**

1           If the ~~board of finance~~ state superintendent finds that the proposed budget for a county  
2 will not maintain the proposed educational program as well as other financial obligations of their  
3 county board of education, it he or she may require that the budget be revised, but in no case  
4 shall he or she permit the reduction of the instructional term pursuant to the provisions contained  
5 in ~~section fifteen, article five of this chapter~~ §18-5-45 of this code nor the employment term below  
6 200 days. Any required revision in the budget for this purpose may be made in the following order:

7           (1) Postpone expenditures for permanent improvements and capital outlays except from  
8 the permanent improvement fund;

9           (2) Reduce the amount budgeted for maintenance exclusive of service personnel so as to  
10 guarantee the payment of salaries for the employment term; or

11           (3) Adjust amounts budgeted in any other way so as to assure the required employment  
12 term of 200 days and the required instructional term of 180 days under the applicable provisions  
13 of law.

**§18-9B-9. Uniform accounting systems for school districts.**

1           The ~~board of finance~~ state superintendent shall formulate the requirements of a uniform  
2 system of management accounting for the use of county school districts. The requirements shall  
3 include at least:

4           (1) The accrual accounting of all revenues and other receipts from whatever source;

5           (2) The accounting of expenditures under the several items of appropriation in accordance  
6 with the expenditure schedule;

7           (3) Monthly and quarterly reports of rate of expenditure, encumbrances, and free balances  
8 under the several items of appropriation;

9           (4) Methods of accounting practice and procedures to be followed in the use of the uniform  
10 system.

11           The accounting requirements so formulated shall be certified ~~by the secretary of the board~~  
12 to the ~~Tax Commissioner~~ State Auditor. The ~~Tax Commissioner~~ State Auditor shall then  
13 incorporate the requirements into a uniform system of school district accounting and as chief  
14 inspector and supervisor of ~~public offices~~ local government offices, shall prescribe the use of the  
15 uniform system by all county school districts by virtue of the authority vested in him or her by §6-  
16 9-2 of this code.

**§18-9B-10. Restrictions on county boards.**

1           County boards of education shall:

- 2           (1) Authorize the expenditure of funds and incur obligations only in accordance with the  
3 budget and the expenditure schedule;
- 4           (2) Make transfers between items of appropriation only with the prior written approval of  
5 the ~~board of finance~~ state superintendent.

**§18-9B-11a. Adjustments in average daily attendance to assure equitable allocation of aid.**

1           [Repealed.]

**§18-9B-12. Practices of fiscal administration.**

1           The ~~state board of school finance~~ state superintendent may formulate the requirements of  
2 adequate practices of fiscal administration to be followed by county school districts. Such  
3 requirements may include:

- 4           (1) Procedures for the receipts, control and disbursement of county school funds;
- 5           (2) Forms for requisitions, purchase orders, disbursements, and other necessary  
6 documents;
- 7           (3) Regulations for the performance of the powers and duties pertaining to school finance;
- 8           (4) Regulations for the exercise of the comptroller function;
- 9           (5) Other instructions and regulations for the proper procedures and practices of fiscal  
10 administration in the county schools.

11           The requirements formulated by the ~~board of finance~~ state superintendent shall be  
12 certified by the ~~secretary of the board~~ state superintendent to the ~~Tax Commissioner~~ State  
13 Auditor. The ~~Tax Commissioner~~ State Auditor as chief inspector and supervisor of ~~public offices~~  
14 local government offices shall incorporate the requirements so certified in his or her instructions  
15 with respect to fiscal administration and shall prescribe their use by all county school districts by  
16 virtue of the authority vested in him or her by §6-9-2 of this code.

**§18-9B-13. Inspection and audit of school finance administration.**

1           The ~~board of finance~~ state superintendent may, through ~~its~~ his or her duly authorized  
2 representatives, make inspections and examinations of the fiscal administration of a county  
3 school district. The inspection and examination may extend to any matter or practice subject to  
4 regulation by the ~~state board~~ state superintendent. Regular and special examinations may be  
5 made by a certified public accountant approved pursuant to §6-9-7 of this code selected by the  
6 county board in accordance with nonemergency regulations submitted by the chief inspector, or  
7 by the chief inspector himself or herself. All examinations shall be made as provided in §6-9-7 of  
8 this code. The ~~board~~ state superintendent may make selective audits to determine the accuracy  
9 of statements and reports made by a county board or superintendent.

10           The report of the examination shall be certified to the county board, which should include  
11 the identification of procedures and practices found to not be in accordance with the requirements  
12 of the ~~state board~~ state superintendent. The county board shall comply with the instructions  
13 forthwith.

14           The ~~state board~~ state superintendent, through ~~its~~ his or her duly authorized  
15 representatives, shall have full access to all books, records, papers, and documents of the county  
16 board.

**§18-9B-14. Establishment of permanent improvement fund; contents and use of fund.**

1           A county board of education may establish a special fund for county school purposes to  
2 be known as the “permanent improvement fund.” The fund shall consist of:

(1) The proceeds of the levy allocated to that purpose by ~~section six c, article eight, chapter eleven of the code, as amended~~ §11-8-6c, §11-8-12 and §11-8-12a of this code;

(2) Unexpended balances of other funds transferred to the fund, with the approval of the ~~board of finance~~ state superintendent, at the end of the fiscal year; and

(3) Any other moneys authorized by law to be used for the purposes of the fund.

The proceeds of the fund shall be used only for the support of building and permanent improvement projects. The fund may be accumulated from year to year but moneys shall not be paid into the fund so as to increase the assets of the fund to a total amount in excess of 25 percent of the amount of the foundation school program for that county for the same school year.

**§18-9B-15. Permanent improvement fund — To be treated as separate fund; expenditures; limitation on accumulations and assets of fund.**

A county board shall treat the permanent improvement fund as a separate fund in the annual budget for county school purposes. Expenditures shall be made from the fund only in accordance with an appropriation made pursuant to the annual budget, or made otherwise in accordance with this article. If the ~~board of finance~~ state superintendent finds, in ~~its~~ his or her examination of the budget of a county school district, that a county board has accumulated, or with proposed additions to the fund in the fiscal year will accumulate, the fund of the county to an amount in excess of 25 percent of the amount of the foundation school program of the county for the same fiscal year, the ~~board of finance~~ state superintendent shall order that no moneys in excess of the limitation be appropriated for or paid into the fund. If the ~~board of finance~~ state superintendent finds that the assets of the fund of a county exceed 25 percent of the amount of the foundation school program for the county for the same year, the ~~board~~ state superintendent may require that building and permanent improvement projects included in the annual budget, be paid for out of the fund.



14           The ~~board of finance~~ state superintendent shall administer this section so as to keep the  
15 accumulated assets of the fund, as near as may be, within the limitation of 25 percent of the  
16 amount of the foundation school program.

**§18-9B-17. Duties of county board and county superintendent.**

1           A county board of education and a county superintendent shall comply with the  
2 instructions of the state ~~board of finance~~ superintendent and shall perform the duties required of  
3 them in accordance with the provisions of this article.

**§18-9B-18. Issuance and enforcement of orders.**

1           The ~~board of finance~~ state superintendent shall enforce the requirements of and its  
2 regulations issued under this article. The ~~board~~ state superintendent may issue orders to county  
3 boards of education requiring specific compliance with ~~its~~ his or her instructions. If a county board  
4 fails or refuses to comply, the ~~board~~ state superintendent may proceed to enforce ~~its~~ his or her  
5 order by any appropriate remedy in any court of competent jurisdiction.

**§18-9B-19. Withholding of state aid for noncompliance by county board.**

1           The ~~board of finance~~ state superintendent may withhold payment of state aid from a  
2 county board that fails or refuses to comply with the provisions of this article or the requirements  
3 of the state ~~board~~ superintendent made in accordance therewith.

**§18-9B-20. Fiscal reports to ~~board of finance~~ state superintendent.**

1           The state ~~board of school finance~~ superintendent may require, and prescribe the form of,  
2 fiscal reports to be made to the ~~board~~ state superintendent at such times and to contain such  
3 information as the ~~board~~ state superintendent may determine.

**§18-9B-21. Reports by ~~board of finance~~ state superintendent.**

1           The ~~board of school finance~~ state superintendent shall make an annual report to the  
2 Governor and to the Legislature pertaining to the work of the ~~board~~ state superintendent and the  
3 finances of school districts. The ~~board~~ state superintendent shall make such special reports as  
4 the Governor or the Legislature may request.

## ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

### §18-9E-1. Short title.

1 [Repealed.]

### §18-9E-3. Air quality in new schools.

1 (a) In an effort to create well-ventilated school environments and notwithstanding any  
2 other provision of this code to the contrary, any new school building designed and constructed in  
3 the state by a county board, regardless of the funding source, shall be designed and constructed  
4 in compliance with the current standards of the American Society of Heating, Refrigerating and  
5 Air conditioning Engineers Handbook (ASHRAE), the National Fire Protection Association code  
6 (NFPA) and the ~~code of the Building Officials and Code Administrators (BOCA)~~ International  
7 Code Council (ICC).

8 (b) Upon notice from the School Building Authority that a new public school building is  
9 occupied, ~~the division of health~~ a local health department shall perform radon testing in the school  
10 within the first year after occupancy and at least every five years thereafter. The county board  
11 shall provide any reasonable assistance to the ~~division of health~~ local health department that is  
12 necessary to perform the radon testing. The radon testing shall include all major student-occupied  
13 areas at or below grade level. If it is determined that radon is present in amounts greater than the  
14 amount determined to be acceptable by the rules promulgated by the School Building Authority,  
15 ~~pursuant to subsection (d) of this section~~ any industry accepted mitigation technique shall be used  
16 to reduce the radon level to the level or below the level determined acceptable by the School  
17 Building Authority.

18 (c) If the School Building Authority determines that it is feasible to test for radon prior to  
19 the construction of a school building, the School Building Authority may cause preconstruction  
20 site testing for radon to be performed.

21 (d) The School Building Authority shall ~~promulgate rules~~ propose rules for legislative  
22 approval, pursuant to §29A-3-1 *et seq.* of this code, to ensure that any new school building

23 ~~designed after the effective date of this article~~ is designed and constructed in accordance with the  
24 current ASHRAE, NFPA and ~~BOCA~~ ICC standards. The School Building Authority shall  
25 ~~promulgate rules~~ propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code,  
26 that establish standards for safe levels of radon for public school buildings. The rules shall include  
27 the requirement that county boards submit all new school designs to the School Building Authority  
28 for review and approval for compliance with current education standards and design efficiencies  
29 prior to preparation of final bid documents.

30 (e) ~~On or before July 1, 2002, the~~ The School Building Authority shall ~~promulgate rules~~  
31 propose rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to establish a  
32 process for independent testing, adjusting, and balancing (TABs) heating, ventilation, and air  
33 conditioning (HVAC) systems in new school buildings or renovated schools when the HVAC  
34 system has been replaced prior to occupancy. The process shall be consistent with current  
35 ASHRAE standards and shall include, but not be limited to, the following:

36 (1) Requiring HVAC designers to be professional engineers registered in this state in the  
37 specific discipline associated with the system being designed;

38 (2) Requiring a process to ensure that the HVAC system has been installed in the  
39 prescribed manner and will operate within the performance guidelines as designed;

40 (3) Requiring participation of the design engineer who designed the system to verify the  
41 intent of the design;

42 (4) Requiring the TAB agent to be qualified to perform the desired services and perform  
43 testing and balancing procedures, or qualified to perform other School Building Authority-  
44 approved certification according to the procedures contained in the Associated Air Balance  
45 Council (AABC) national standards, the National Environmental Balancing Bureau (NEBB)  
46 procedural standards and the Environment Engineering Consultants (EEC) standards for testing,  
47 adjusting and balancing of environmental systems;

48           (5) Requiring that the independent TAB agent directly represent the building owner and is  
49 under contract with the building owner and paid from project funds;

50           (6) Requiring that sufficient documentation is provided to the owner to facilitate control  
51 and maintenance of the systems in accordance with the manufacturer's requirements;

52           (7) Requiring that sufficient training is provided by the equipment manufacturer or an agent  
53 of the manufacturer to those persons who will operate and maintain the systems prior to  
54 occupation of the facility, including at least one full day follow-up training between six and eight  
55 months after the facility has been occupied; and

56           (8) Requiring certification upon successful completion of the TAB process by the  
57 independent TAB agent.

58           (f) To ensure proper maintenance and operation of new and replacement HVAC  
59 equipment, the Department of Education, using existing staff, shall provide county maintenance  
60 personnel additional training on the equipment and its controls at the site of the installation. The  
61 training shall occur within one year after student occupation of any new school facility or at any  
62 existing school facility where the HVAC system has been replaced or generally rehabilitated.  
63 Additionally, the Department of Education's facility staff shall provide on-site training to the county  
64 maintenance staff on the county's HVAC equipment at any facility that has been determined to  
65 have problematic indoor air quality as identified through the complaint procedure set forth in state  
66 board policy 6202.

67           (g) Upon completion of the required training, the Department of Education's facility staff  
68 shall provide the county board a report summarizing the training that was completed and a plan  
69 for continuing education of the county's HVAC staff. If sufficient staff is not available to the county  
70 to perform maintenance on HVAC systems, the Department of Education's staff shall assist the  
71 county in the development of an immediate and long range maintenance plan to ensure that  
72 HVAC systems are maintained and operated according to the manufacturer's recommendations.

(h) ~~Beginning July 1, 2002, and every~~ Every three months thereafter the Department of Education shall forward to the School Building Authority copies of any complaints received by the Department of Education of indoor air quality problems which require system repair or replacement and are identified through the complaint procedure established in state board policy 6202.

(i) The state board shall promulgate rules, pursuant to §29A-3B-1 *et seq.* of this code, ~~in consultation with the division of health~~ that authorize the use of any appropriate floor covering in public school buildings, based on user needs and performance specifications.

**§18-9E-4. Heating, ventilation, and air-conditioning technicians.**

(a) Subject to appropriation by the Legislature ~~therefor~~, the state board, ~~in consultation with the division of health~~, shall promulgate rules pursuant to §29A-3B-1 *et seq.* of this code that will address servicing public school buildings by heating, ventilation and air-conditioning (HVAC) technicians. The rules shall set forth a job description for the HVAC technician. At the discretion of the state board, HVAC technicians may be employed by the county board of education, ~~by the regional educational service agency servicing the county~~ or by the Department of Education using the funds allocated pursuant to this section. The hiring entity shall set a salary for the HVAC technician that is competitive with other employers of HVAC technicians in the region after accounting for annual leave, sick leave, insurance benefits, retirement benefits and any other benefits provided. Existing employees who have advanced HVAC skills or existing employees who receive appropriate HVAC training may be utilized as HVAC technicians. The rules also shall provide for sufficient continuing education training for HVAC technicians to maintain proficiency in the changing technologies in the field. ~~The rules shall be submitted to the Legislative Oversight commission on educational accountability prior to September 1, 1999~~

(b) County boards, ~~regional educational service agencies~~ and the Department of Education shall have the option to contract for HVAC services from prequalified vendors if this option is more cost effective than using existing employees or creating a new position: *Provided,*

18 That an existing employee may not be displaced by contracting for HVAC technician services:  
19 *Provided, however,* That HVAC services that have been performed in the past or which require  
20 knowledge and experience the employer does not have access to, may be contracted out to a  
21 prequalified vendor.

22 (c) Funds appropriated for the purpose of hiring HVAC technicians shall be appropriated  
23 originally to the Department of Education, ~~The Department of Education then may allocate the~~  
24 ~~funds to the regional educational service agencies or then~~ to the counties. ~~depending upon which~~  
25 ~~entity employs the HVAC technician as specified by rule~~

**§18-9E-5. Investigation of indoor air quality complaints in existing schools and schools  
subsequently constructed.**

1 (a) The state board, ~~in consultation with the division of health~~ shall promulgate rules,  
2 pursuant to §29A-3B-1 *et seq.* of this code, which require each county board to investigate all  
3 reports of indoor air quality problems within the county. The rules shall set forth a designated  
4 official or officials within the county school system to be responsible for addressing, pursuant to  
5 this section, any indoor air quality complaints. The rules also shall set forth a procedure for any  
6 party to file a complaint with the designated official or officials. Any indoor air quality complaint  
7 found to be valid by the designated official or officials shall be addressed by forming a plan of  
8 correction. Any county board that addresses an indoor air quality complaint is encouraged to seek  
9 any available assistance from local, state and federal agencies in both investigating the complaint  
10 and in forming the plan of correction. A county board shall consider any documented plans of  
11 closure of a school building when forming any plan of correction for that school building. ~~The rules~~  
12 ~~shall be submitted to the Legislative Oversight commission on education accountability prior to~~  
13 ~~September 1, 1999~~ Additionally, the rules shall set an appropriate cost for a plan of correction  
14 over which all such plans of correction shall be reported to the Legislative Oversight commission  
15 on education accountability. Based upon the Legislative Oversight commission on education

accountability's experience in receiving the complaints, the commission shall submit a recommendation for funding the plans of correction.

(b) Furthermore, each plan of correction shall be incorporated into each county board's 10-year county-wide major improvement plan set forth in §18-9D-16 of this code. Also pursuant to §18-9D-16 of this code, the state board may restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in §18-9A-9 of this code: *Provided*, That nothing in this subsection shall be interpreted as requiring that a county board make addressing an air quality complaint a priority over other projects in the county board's 10-year county-wide major improvement plan.

## **ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.**

### **§18-9F-1. Legislative findings and intent.**

[Repealed.]

### **§18-9F-3. School access safety plan.**

(a) To facilitate the goals of this article and to ensure the prudent and resourceful expenditure of state funds, each county board seeking funds for school access safety projects during a fiscal year shall submit to the authority a school access safety plan or annual plan update that addresses the school access safety needs of each school facility in the county. In developing its plan, the county board shall consult with the Countywide Council on Productive and Safe Schools in accordance with the provisions of this section and ~~section forty-two, article five of this chapter~~ §18-5-42 of this code.

(b) The safety plan shall include at least the following:

(1) A countywide inventory of each school facility's means of ingress to and egress from the school for students, school employees, parents, visitors and emergency personnel including, but not limited to:

(A) The number of controlled points of ingress to the school facility;

(B) The number and placement of exterior doors;

- 14 (C) The use of monitoring systems on exterior doors;
- 15 (D) The use of timed, magnetic or other locks on exterior doors;
- 16 (E) The use of two-way communication systems between points of ingress and school
- 17 personnel;
- 18 (F) The use of functional panic or other alarm hardware on exterior doors; and
- 19 (G) The use of remote visitor access systems on points of ingress;
- 20 (2) The recommendations and guidelines developed by the Countywide Council on
- 21 Productive and Safe Schools pursuant to ~~section forty-two, article five of this chapter~~ §18-5-42 of
- 22 this code together with the county board's assessment of the recommendations and guidelines;
- 23 (3) Recommendations for effective communication and coordination between school
- 24 facilities, local law-enforcement agencies and local emergency services agencies in the county;
- 25 (4) An assessment of the current status of crime committed on school campuses and at
- 26 school-related functions;
- 27 (5) A projected school access safety repair and renovation schedule for all school facilities
- 28 in the county;
- 29 (6) A prioritized list of all projects contained in the plan, including the projected cost of
- 30 each project;
- 31 (7) A description of how:
  - 32 (A) The plan addresses the goals of this article and guidelines established by the authority;
  - 33 (B) Each project furthers the county board's safety plan, facilities plan and school major
  - 34 improvement plan;
- 35 (8) Notation of the funds available for allocation and disbursement to the county board
- 36 pursuant to section six of this article;
- 37 (9) A description of any source of local funds that the county board intends to contribute
- 38 to the safety projects, or an approved financial hardship waiver, to satisfy the local contribution
- 39 requirements of section six of this article; and



(10) Any other element considered appropriate by the authority or required by the guidelines established pursuant to section three of this article, including any project and maintenance specification.

**§18-9F-4. Guidelines and procedures for school access safety plans; project evaluation; on-site inspection of facilities.**

(a) ~~By June 1, 2007~~ The authority shall establish and distribute to each county board guidelines and procedures regarding school access safety plans and school access safety projects, which shall address at least the following:

(1) All of the necessary elements of the school access safety plan required in accordance with the provisions of §18-9F-3 of this code; ~~section three of this article~~

(2) The manner, time line and process for submission to the authority of each safety plan and annual plan update, including guidelines for modification of an approved safety plan;

(3) Any project and maintenance specifications considered appropriate by the authority;

(4) Procedures for a county board to submit a preliminary plan, plan outline or plan proposal to the authority prior to submitting the safety plan. The preliminary plan, plan outline or plan proposal shall be the basis for a consultation meeting between representatives of the county board and the authority. The meeting shall be held as soon as practicable following submission in order to:

(A) Ensure understanding of the goals of this article;

(B) Discuss ways the plan may be structured to meet the goals of this article; and

(C) Ensure efficiency and productivity in the approval process; and

(5) Procedures for notifying county boards of the funds available for allocation and disbursement during each fiscal year pursuant to section six of this article.

(b) ~~By June 1, 2007~~ The authority shall establish and distribute to each county board guidelines and procedures for evaluating safety plans and safety projects that address at least the following:

(1) Whether the proposed safety project furthers the safety plan and complies with the guidelines established by the authority;

(2) How the safety plan and safety project will ensure the prudent and resourceful expenditure of state funds and achieve the purposes of this article;

(3) Whether the safety plan and safety project advance student health and safety needs, including, but not limited to, critical health and safety needs;

(4) Whether the safety plan and safety project include regularly scheduled preventive maintenance; and

(5) Consideration of the prioritized list of projects required by section three of this article.

(c) The authority shall establish guidelines and procedures for allocating and disbursing funds in accordance with section six of this article, subject to the availability of funds.

(d) Each county board receiving funds pursuant to this article annually shall conduct an on-site inspection and submit an audit review to the state board. The inspection shall be conducted in accordance with the provisions of the Department of Education's Handbook on Planning School Facilities.

**§18-9F-8. Report.**

[Replead].

**§18-9F-9. Crisis Response Plan.**

(a) The state board in conjunction with the Division of Homeland Security and Emergency Management shall promulgate ~~by December 31, 2014~~ a legislative rule in accordance with ~~article three b, chapter twenty-nine a §29-3B-1 et seq. of this code, and if necessary may promulgate an emergency rule in accordance with said article~~ for the establishment of an up-to-date, school specific crisis response plan at every school in the state. In developing the rule, the state board shall consider plans currently being developed as part of the safe schools initiative currently underway by the School Building Authority and the Division of Homeland Security and Emergency Management. In addition, those portions of a school's access safety plan created pursuant to

section three of this article may be used as a portion of the school's school specific crisis response plan if there are any overlapping requirements. The rule shall provide for at least the following:

(1) A model school crisis response plan for use by each school in the state, including a uniform template which shall be used by each school to file the plan, including at least the following information, in a secure electronic system identified by the Division of Homeland Security and Emergency Management:

(A) The school employee in charge during a crisis and a designated substitute;

(B) A communication plan to be used during a crisis;

(C) Protocols for responding to immediate physical harm of students, faculty or staff and to traumatic events, including the period after the events have concluded;

(D) Disaster and emergency procedures to respond to earthquakes, fire, flood, other natural disasters, explosions or other events or conditions in which death or serious injury is likely;

(E) Crisis procedures for safe entrance to and exit from the school by students, parents, and employees, including an evacuation and lock down plan; and

(F) Policies and procedures for enforcing school discipline and maintaining a safe and orderly environment during the crisis.

(2) A requirement that each school's school specific crisis response plan shall be in place and filed with that school's county board, and included in a secure electronic system identified by the Division of Homeland Security and Emergency Management; ~~no later than August 1, 2013, or soon after completion by the school, whichever occurs first~~

(3) The necessary safeguards to protect information contained in each school specific crisis response plan that may be considered protected critical infrastructure information, law enforcement sensitive information or for official use only. These safeguards must have the approval the Division of Homeland Security and Emergency Management. County boards shall provide the same necessary safeguards for the information in the plan;

(4) The annual review and necessary update of the model plan and uniform template by state board in conjunction with the Division of Homeland Security and Emergency Management by December 31 of each year; ~~after 2014~~

(5) The development by each school of a school specific crisis response plan by using the state board's model plan as an example and with consultation from local social services agencies, local first response agencies including police, fire, emergency medical services (EMS), emergency management and any other local entities that the school's crisis response planning team determines should be consulted;

(6) Procedures for the annual review and update if necessary by each school of its school specific crisis response planning plan. Each school shall file either an updated crisis response plan or a memorandum stating that no update to the crisis response plan was necessary with its county board and the Division of Homeland Security and Emergency Management no later than August 1 of each year; ~~after 2013~~

(7) Procedures for each school within the state to form a crisis response planning team, which team may consist of the school's Local School Improvement Council or a separate team consisting of the principal, two teachers, one service person and two parents of children attending the school. In addition the school may include on the team one member of the county board, a school counselor, a member from local law-enforcement authorities, the local county emergency services director and one student in grade ten or higher if the school has those grades;

(8) Procedures for informing and training school personnel on any actions required of them to effectuate the school's school specific crisis response plan;

(9) A model template for redacted copies of the school crisis response plan for the public inspection and for the release and notice to parents of information related to the plan; and

(10) Procedures for non public schools to establish, file and update school crisis response plans consistent with ~~subdivision (1) subsection (a) of this section~~ §18-9F-9(a)(1) of this code.

(b) The county board shall keep the current crisis response plan of each school in the county on file and, unless otherwise provided for, provide a copy of each school's crisis response plan to each local emergency response agency that has a role in the plan. Local emergency response agencies that maintain a copy of the plan shall provide the necessary safeguards for the information in the plan established pursuant to the state board rule promulgated pursuant to ~~subsection (a) of this section~~ §18-9F-9(a) of this code. Upon request, a redacted copy of a school crisis response plan shall be made available for inspection by the public with any information removed that is necessary for compliance with the necessary safeguards. Following the filing of its school specific crisis response plan with the county board pursuant to ~~subdivision (2),~~ ~~subsection (a) of this section~~ §18-9F-9(a)(2) of this code, each school shall annually send notice home to all parents and guardians of students at the school alerting the parents and guardians to the existence of the plan and the ability to review a redacted copy at the offices of the county board.

## **ARTICLE 10J. BLIND PERSONS' LITERACY RIGHTS AND EDUCATION ACT.**

### **§18-10J-1. Short title.**

[Repealed.]

### **§18-10J-6. Teacher certification and training.**

As part of the professional certification process, teachers seeking to become certified in the education of blind and visually impaired children shall demonstrate competence in reading and writing braille. Before issuing a professional certificate to teach the blind and visually impaired, the West Virginia Department of Education shall require that the applicant demonstrate, based upon standards adopted by the National Library Service for the Blind and Physically Handicapped, Library of Congress, Washington, D.C., that he or she is proficient in reading and writing braille. ~~This requirement becomes effective July 1, 2000~~ Teachers already certified in the education of blind and visually impaired children are not required to demonstrate that proficiency in order to retain their certification. Further, the West Virginia Department of Education shall, on

10 a schedule of at least once every three years, make available to all teachers of blind and visually  
11 impaired children a continuing education class in reading or writing braille or a college credit  
12 course in reading and writing braille, or both. In order to achieve successful completion of a  
13 course, a teacher shall demonstrate proficiency in reading and writing braille at a level  
14 commensurate with the standards adopted by the National Library Service for the Blind and  
15 Physically Handicapped, Library of Congress.

## **ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.**

### **§18-17-3. Tuition, board and clothing of pupils. ~~indigent clothing fund~~**

1 All such deaf pupils and blind pupils shall be admitted to the schools without charge for  
2 board and tuition. When not otherwise provided with clothing, they shall be furnished therewith by  
3 the institution while they are pupils therein. ~~and the superintendent shall make out an account~~  
4 ~~therefor in each case against the county where the pupil receiving the clothing resided at the time~~  
5 ~~the clothing was furnished, in an amount not exceeding \$75 per annum for any one pupil, which~~  
6 ~~account shall be sworn to by the superintendent and countersigned by the business manager and~~  
7 ~~shall be transmitted by the superintendent to the Auditor of the state, who shall forward a copy~~  
8 ~~thereof to the clerk of the county court of such county. The county court shall, at its next levy term,~~  
9 ~~provide for the payment of the same and cause the amount to be paid directly to the West Virginia~~  
10 ~~schools for the deaf and the blind to be deposited into the indigent clothing fund. All money so~~  
11 ~~received shall be disbursed upon requisitions for the payment of accounts incurred thereunder. If~~  
12 ~~any such accounts are not paid within a reasonable time after such levy term, it shall be the duty~~  
13 ~~of the Auditor to collect the same.~~

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-9. Gifted education caseload review.**

1 [Repealed.]

NOTE: The purpose of this bill is to remove sections of the West Virginia Code, or portions of some sections, which contain antiquated, redundant, or outdated requirements for the administration of education in West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.